

interexchange partner had contacted the IXC to request such service.¹¹⁹ Worse still, when the large IXC affirmatively contacted BA-WV to let it know that facilities were available, BA-WV indicated that it already had the needed DS3 circuit up and running.¹²⁰ Clearly, the Commission should carefully review ILEC allegations of “bandwidth famine.”

On the positive side, comments filed during the proceeding demonstrated clearly that competitive carriers are deploying advanced telecommunications capability throughout West Virginia. The record in that proceeding demonstrated that a cable television company has begun providing telecommunications services over an OC12 fiber network, which can be upgraded to OC48 as demand requires.¹²¹ Similarly a subsidiary of a utility is deploying an OC48 backbone network that will connect numerous cities in West Virginia with one another and with Pittsburgh, Pennsylvania.¹²² Thus, not only are the presently needed facilities available, but competitors from other industries (cable and energy) are entering telecommunications markets – in rural areas, no less – just as Congress envisioned when it crafted the 1996 Amendments to the Communications Act.

At bottom, the challenge for the Commission is to determine whether an actual, acute shortage exists in a given geographic area or whether any perceived bandwidth shortfall is

¹¹⁹ *Ex Parte* letter from Frank S. Simone to Magalie Roman Salas, CC Docket No. 98-11 at 2 (filed Aug. 31, 1998).

¹²⁰ *NPRM* at ¶ 3.

¹²¹ *Comments of Helicon Corporation*, CC Docket No. 98-11 at 5 (filed Aug. 10, 1998).

¹²² *Comments of Allegheny Communications Connect, Inc.*, CC Docket No. 98-11 at 2 (filed Aug. 10, 1998).

merely an “occasional, transient lack of supply.”¹²³ Intermedia suggests that the Commission should endorse a very strong, but potentially rebuttable, presumption that competitive forces will work to meet demand. As evidenced by the West Virginia case, markets work in rural areas too, and the Commission should be very, very skeptical of claims by monopolists that an expansion of their monopoly power is needed to satisfy the demands of consumers.

In any event, any attempt to carve out a limited interLATA restriction would be impossible to police and implement. Advanced services are used to provide a variety of services, from Internet access to POTS, and it would be impossible to determine if a BOC was in fact restricting itself to providing only the designated advanced services. Any form of interLATA relief would disrupt the regulatory balance of the Communications Act, and would disserve the public interest.

InterLATA relief is the “carrot” that promotes ILEC procompetitive behavior, and to the extent that the promise of providing in-region long distance service doesn’t compel the BOCs to open their markets, the promise of providing in-region interLATA advanced services will further encourage the BOCs to take the steps necessary to open their networks to competitors. Until such time, however, even a limited grant of relief (and we show that it would be impossible to enforce restricted relief) would create a substantial disincentive for a BOC to implement the procompetitive provisions of the Telecom Act. This is particularly true in the case of U S WEST, which has taken the most intransigent position of any BOC in slow-rolling interconnection, and refusing to meet its other obligations under § 251(c).

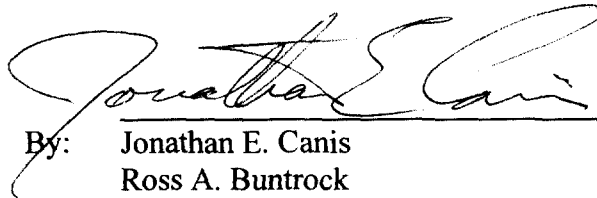
¹²³ 706 NOI at ¶ 33.

Intermedia Communications Inc.
CC Docket No. 98-147
September 25, 1998

IX. CONCLUSION

Intermedia thanks the Commission for this opportunity to present its views on the Commission's tentative conclusions, and to make additional proposals for the establishment of rules and policies to promote the deployment of advanced telecommunications services and facilities. Intermedia urges the Commission to adopt rules and policies to implement the procompetitive provisions of the Act, including § 706, in accordance with the discussion herein.

Respectfully submitted,



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Fax: (202) 955-9792

Counsel for
INTERMEDIA COMMUNICATIONS INC.

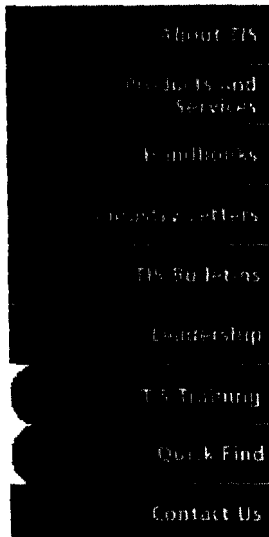
September 25, 1998

A

ATTACHMENT A



© Bell Atlantic
Telecom Industry Services



Welcome to the Bell Atlantic New York Collocation Site Summary

The purpose of this listing is to provide Bell Atlantic CLEC customers with current information about the status of those Bell Atlantic Central Offices (COs) located in New York that have been reviewed for collocation availability to date. This listing indicates what types of collocation, physical or virtual, are currently installed or in progress in each CO, as well as future availability.

At this time, not all Bell Atlantic COs are available for Physical Collocation. The determination of whether or not Physical Collocation is available in a CO is made after Bell has performed a site survey of the CO and found that there is insufficient space available to accommodate a request for physical collocation. These COs are designated in the Future Availability column as "Virtual".

Some COs do have sufficient space available to provide physical collocation but that space is raw, unconditioned space. In order to condition the space for physical collocation purposes, Bell Atlantic will need among other things to provide sufficient heating, ventilation, and air conditioning, and / or augment the building's power plant. The need for these building upgrades as well as the additional costs that will be charged to the CLECs will depend on the quantity and type of equipment the requesting CLEC plans to install. There may be some cases, a small project will not entail additional costs. These COs are designated in the Future Availability column.

For those COs where the Future Availability column is blank, Bell Atlantic is not currently aware of any limitations on the provision of either physical or virtual collocation.

[Download Attachment \(13k\)](#)

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BELL ATLANTIC COLLOCATION SITE SUMMARY

CENTRAL OFFICES REVIEWED

| <u>ST</u> | <u>CO</u> | <u>CLLI</u> | <u>Collocation</u> <u>Installed or Jobs in</u> <u>Progress</u> | <u>Future Availability</u> |
|-----------|-------------------------|-------------|--|--|
| NY | Albany - State Street | ALBYNYSS | Physical | |
| NY | Amherst | AMHRNYMP | Physical | |
| NY | Buffalo - Franklin | BLFONYFR | Physical | |
| NY | Binghamton | BNGHNYHY | Physical | |
| NY | Central Islip | BRWNNYBW | Both | Virtual Only |
| NY | Endicott | ENDCNYEN | Physical | |
| NY | Floral Park | FLPKNYFP | Physical | |
| NY | Farmingdale | FRDLNYFM | Virtual | Both - Physical may require raw space conversion |
| NY | Greenburgh | GNBGNYFV | | Virtual Only |
| NY | Garden City | GRCYNYGC | Both | Virtual Only |
| NY | Great Neck | GRNKNYGN | Physical | |
| NY | Hicksville | HCVLNYHV | Both | Both - Physical may require raw space conversion |
| NY | Hempstead | HMPSNYHS | Physical | |
| NY | Huntington Station | HNSTNYHU | Physical | |
| NY | Harrison | HRSNNYNH | Both | Virtual - Physical requires site survey |
| NY | Ithaca - Tioga | ITHCNYIH | Physical | |
| NY | Ithaca - Pleasant Grove | ITHCNYPG | Physical | |
| NY | Johnson City | JHCYNYJC | Physical | |
| NY | Lynbrook | LYNBNYLB | Physical | |
| NY | Mineola | MINLNYMI | Physical | |
| NY | Manhasset | MNHSNYMH | Physical | |
| NY | NYC - 14th Street | NYCKNY14 | Physical | |
| NY | NYC - 71th Street | NYCKNY71 | Physical | |
| NY | NYC - 77th Street | NYCKNY77 | Physical | |
| NY | NYC - Avenue I | NYCKNYAI | Physical | |
| NY | NYC - Albermarle Road | NYCKNYAL | Physical | |
| NY | NYC - Avenue R | NYCKNYAR | Physical | |
| NY | NYC - Avenue U | NYCKNYAU | | |
| NY | NYC - Avenue Y | NYCKNYAY | Physical | |
| NY | NYC - Bridge Street | NYCKNYBR | Physical | Virtual Only |
| NY | NYC - Bushwick Avenue | NYCKNYBU | | Both - Physical may require raw space conversion |
| NY | NYC - Clinton Avenue | NYCKNYCL | Physical | |
| NY | NYC - Fairview Avenue | NYCKNYFA | Physical | |
| NY | NYC - 14th Avenue | NYCKNYFT | Physical | |
| NY | NYC - Kenmore Place | NYCKNYKP | Physical | |
| NY | NYC - Liberty Avenue | NYCKNYLA | | Both - Physical may require raw space conversion |
| NY | NYC - Troy Avenue | NYCKNYTY | Physical | |
| NY | NYC - Williamsburg | NYCKNYWM | Physical | |
| NY | NYC - 2nd Avenue | NYCMNY13 | Both | Both - Physical job to convert raw space in progress |
| NY | NYC - W 18 Street | NYCMNY18 | Both | Virtual Only |
| NY | NYC - E 30 Street | NYCMNY30 | Both | |
| NY | NYC - W 36 Street | NYCMNY36 | Both | |
| NY | NYC - E 37 Street | NYCMNY37 | Both | Both - Physical job to convert raw space in progress |
| NY | NYC - W 42 Street | NYCMNY42 | Physical | |
| NY | NYC - W 50 Street | NYCMNY50 | Physical | |
| NY | NYC - E 56 Street | NYCMNY56 | Both | Both - Physical job to convert raw space in progress |
| NY | NYC - W 73 Street | NYCMNY73 | Physical | Both - Physical job to convert raw space in progress |
| NY | NYC - E 79 Street | NYCMNY79 | Both | Both - Physical job to convert raw space in progress |
| NY | NYC - E 97 Street | NYCMNY97 | Physical | |
| NY | NYC - Broad Street | NYCMNYBS | Physical | Both - Physical job to convert raw space in progress |
| NY | NYC - Convent Avenue | NYCMNYCA | | Both - Physical job to convert raw space in progress |

BELL ATLANTIC COLLOCATION SITE SUMMARY

| | | | | |
|----|-----------------------------|----------|----------|--|
| NY | NYC - Corona | NYCMNYCO | Physical | |
| NY | NYC - Manhattan Avenue | NYCMNYMH | Physical | |
| NY | NYC - Thayer Street | NYCMNYTH | | Both - Physical may require raw space conversion |
| NY | NYC - Varick Street | NYCMNYVS | Physical | Both - Physical job to convert raw space in progress |
| NY | NYC - W 176 Street | NYCMNYWA | Physical | Both - Physical may require raw space conversion |
| NY | NYC - West Street | NYCMNYWS | Physical | |
| NY | NYC - Astoria | NYCQNYAS | Physical | |
| NY | NYC - Bayside | NYCQNYBA | Physical | |
| NY | NYC - Belle Harbor | NYCQNYBH | | Both - Physical may require raw space conversion |
| NY | NYC - Forest Hills | NYCQNYFH | Physical | |
| NY | NYC - Flushing | NYCQNYFL | Physical | |
| NY | NYC - Far Rockway | NYCQNYFR | | Both - Physical may require raw space conversion |
| NY | NYC - Hollis | NYCQNYHS | Physical | |
| NY | NYC - JFK ¹ | NYCQNYIA | | Virtual Only |
| NY | NYC - Jamaica | NYCQNYJA | Physical | Virtual Only |
| NY | NYC - Long Island City | NYCQNYLI | Physical | |
| NY | NYC - Laurelton | NYCQNYLN | | |
| NY | NYC - North Jamaica | NYCQNYNJ | | Both - Physical may require raw space conversion |
| NY | NYC - Newtown | NYCQNYNW | Physical | |
| NY | NYC - Ozone Park | NYCQNYOP | Physical | |
| NY | NYC - Rockway Avenue | NYCQNYRA | | |
| NY | NYC - New Dorp | NYCRNYND | Physical | |
| NY | NYC - Staten Island - North | NYCRNYNS | Physical | |
| NY | NYC - Richmond Hill | NYCRNYRH | Physical | |
| NY | NYC - Staten Island - South | NYCRNYSS | Physical | |
| NY | NYC - Staten Island - West | NYCRNYWS | Physical | |
| NY | NYC - Cruger Avenue | NYCXNYCR | Physical | |
| NY | NYC - Grand Concourse | NYCXNYGC | | Both - Physical may require raw space conversion |
| NY | NYC - Hoe Avenue | NYCXNYHO | | Both - Physical may require raw space conversion |
| NY | NYC - E 167th Street | NYCXNYJE | | Both - Physical may require raw space conversion |
| NY | NYC - Kingsbridge | NYCXNYKB | Physical | |
| NY | NYC - E 150th Street | NYCXNYMH | | |
| NY | NYC - Tiebout Avenue | NYCXNYTB | | |
| NY | NYC - Tratman Avenue | NYCXNYTR | Physical | |
| NY | Poughkeepsie | PGHKNYSH | Physical | |
| NY | Plainview | PLWNYPV | Physical | |
| NY | Pleasantville | PSVLNYPV | Physical | |
| NY | Portchester | PTCHNYPC | Physical | |
| NY | Suffern | SFRNNYSU | Physical | |
| NY | Syosset | SYOSNYSY | Physical | Both - Physical may require raw space conversion |
| NY | Syracuse - Dippold Avenue | SYRCNYDD | | Virtual Only |
| NY | Syracuse - Electronic Pkwy | SYRCNYEP | | Virtual Only |
| NY | Syracuse - James Street | SYRCNYJS | Physical | |
| NY | Syracuse - State Street | SYRCNYSU | Physical | |
| NY | Tarrytown | TRTWNYTT | Virtual | Virtual Only |
| NY | Utica | UTICNYUT | Physical | |
| NY | Westbury | WBYNYWE | Physical | |
| NY | White Plains | WHPLNYWP | Physical | |
| NY | Williamsville | WSVLNYNC | Physical | |

¹ This is a small leased building, not owned by BA.

ATTACHMENT B

Christian A. Bourgeacq
Senior Counsel

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Fax 512 870-3420



September 21, 1998

ALJ Katherine D. Farroba
Public Utility Commission of Texas
1701 North Congress
Austin, TX 78701

**Re: Project No. 16251 – Section 271 Collaborative Process;
Performance measures follow-up information**

Dear Judge Farroba:

Enclosed please find an updated list of performance measurements that Randy Dysart prepared, including those new or augmented measures that SWBT negotiated with the Texas facilities-based CLEC coalition. Shading indicates the new or augmented measures.

Please call me with any questions concerning the above. Thanks.

Sincerely,

A handwritten signature in cursive script that reads "Christ. A. Bourgeacq".

Christian A. Bourgeacq

Enclosure

cc: Donna Nelson, Asst. Director, Legal Division, PUC (hand-delivered)
Howard Siegel, Asst. Director, OPD, PUC (hand-delivered)
Nara Srinivasa, Industry Analysis, PUC (hand-delivered)
Parties of record (fax)

SOUTHWESTERN BELL PERFORMANCE MEASUREMENTS

91. **Measurement - Average Days Required to Process a Request**
Definition - The average time it takes to process a request for access to poles, conduits, and right-of-ways.
Calculation - $\Sigma(\text{Date request returned to CLEC} - \text{date request received from CLEC}) \div$
total number of requests.
Report Structure - Reported for individual CLEC and all CLECs.

X. COLLOCATION

92. **Measurement - % Missed Collocation Due Dates**
Definition - The percent of SWBT caused missed due dates for Physical Collocation projects.
Calculation - $(\text{count of number of SWBT caused missed due dates for physical collocation facilities} \div \text{total number of physical collocation projects}) * 100$
Report Structure - Reported for individual CLEC and all CLECs.
93. **Measurement - Average Days Required to Complete Physical Collocation Facilities**
Definition - The average time it takes to complete physical collocation facilities.
Calculation - $\Sigma(\text{Date collocation work completed} - \text{date CLEC agrees to collocation work}) \div$
total number collocation projects.
Report Structure - Reported for individual CLEC and all CLECs by active and non-active.
94. **Measurement - % of requests processed within 35 business days**
Definition - The percent of requests for collocation facilities processed within 35 business days.
Calculation - $(\text{count of number of requests processed within 35 days} \div \text{total number of requests}) * 100$
Report Structure - Reported for individual CLEC and all CLECs. SWBT's objective is 90% of requests answered within 35 business days.

C

ATTACHMENT C

INTERCONNECTION AGREEMENT-TEXAS

between

Southwestern Bell Telephone Company

and

AT&T Communications of the Southwest, Inc.

AT&T
4/2/98

TABLE OF CONTENTS

| | | |
|--------------------------------|---|---------------------------|
| DOCKET NO. 16226 | § | |
| APPLICATION OF AT&T | § | PUBLIC UTILITY COMMISSION |
| COMMUNICATIONS OF THE | § | |
| SOUTHWEST, INC. FOR COMPULSORY | § | OF TEXAS |
| ARBITRATION TO ESTABLISH AN | § | |
| INTERCONNECTION AGREEMENT | § | |
| BETWEEN AT&T AND SOUTHWESTERN | § | |
| BELL TELEPHONE COMPANY | § | |

| | | |
|------------------------------|---|---------------------------|
| DOCKET NO. 17579 | § | |
| APPLICATION OF AT&T | § | PUBLIC UTILITY COMMISSION |
| COMMUNICATIONS OF THE | § | |
| SOUTHWEST, INC. FOR | § | OF TEXAS |
| COMPULSORY ARBITRATION | § | |
| TO ESTABLISH AN INTER- | § | |
| CONNECTION AGREEMENT BETWEEN | § | |
| AT&T AND SOUTHWESTERN BELL | § | |
| TELEPHONE COMPANY | § | |

AT&T'S /SWBT'S INTERCONNECTION AGREEMENT AMENDED AS OF 4/1/98

| | <u>PAGE</u> | <u>FILE NAME</u> |
|---|-------------|----------------------|
| <u>ATTACHMENTS</u> | | |
| <i>Appendix A. Interconnection Agreement Texas</i> | | |
| Table of Contents | i-iii | 00t&c.doc |
| General Terms and Conditions | 1-33 | 00t&c.doc |
| <u>ATTACHMENTS</u> | | |
| <u>Resale</u> | | |
| Attachment 1: Resale | 1-8 | 01resale.doc |
| Appendix Services/Pricing | 1-6 | 01serv.doc |
| Exhibit A: SWBT's Telecommunications | | |
| Services Available for Resale | 1-145 | txresale.0113 (xls) |
| Exhibit B SWBT's Other Services | | |
| Available for Resale | 1-8 | txother.011398 (xls) |

ATTACHMENT 17: Failure to Meet Performance Criteria

This Attachment 17: Failure to Meet Performance Criteria to the Agreement sets forth the terms and conditions by which SWBT will pay AT&T liquidated damages in the event of a Specified Performance Breach as defined in this Attachment.

1.0 Definitions

1.1 When used in this Attachment 17, the following terms will have the meanings indicated:

1.1.1 Specified Activity means any activity performed under this Agreement as to which a Performance Measurement has been established in this Attachment.

1.1.2 Performance Measurements means the set of measurements listed in Section 9.0 of this Attachment, as it may be supplemented or modified by agreement of the Parties.

1.1.3 Performance Criteria means the target level of SWBT performance specified for each Performance Measurement. Generally, the Performance Measurements contained in this Attachment specify parity with SWBT performance (i.e., performance equal to that which SWBT achieves for itself in providing equivalent end user service) as the Performance Criterion. For certain Performance Measurements, a specific quantitative target has been adopted as the Performance Criterion.

1.1.4 Specified Performance Breach means the failure by SWBT to meet the Performance Criteria for any Specified Activity listed in section 1.1.4.4 by any of the degrees of variance as described below.

1.1.4.1 Where monthly performance by SWBT for AT&T on a Performance Measurement is within one standard deviation of the Performance Criteria specified, no Specified Performance Breach occurs with respect to that measurement.

1.1.4.2 SWBT performance on a single measurement for AT&T that is greater than one standard deviation and less than three standard deviations below the Performance Criteria will constitute a Specified Performance Breach if the same measure remains in this range for two consecutive months (liquidated damages of \$25,000 apply to each measurement which remains in the above stated range for two months); Conversely, if for two consecutive months, the performance provided to AT&T exceeds that provided to SWBT (within one to three standard deviations), SWBT will accrue a performance credit for the service category which may be used to offset future performance penalties incurred in the same service category.

1.1.4.3 SWBT performance for AT&T on any Performance Measurement in a single month that is greater than three standard deviations below the Performance Criteria will constitute a Specified Performance Breach and will result in liquidated damages of \$75,000 payable for each such month; Conversely, if in a single month, the performance provided to AT&T exceeds that provided to SWBT (by greater than three standard deviations), SWBT will accrue a performance credit for the service category which may be used to offset future performance penalties incurred in the same service category.

1.1.4.3.1 The four service categories within which performance credits may be used to offset the penalties are Pre-Ordering, Ordering/Provisioning, Maintenance/Repair, and General.

1.1.4.4 Liquidated damages for a Specified Performance Breach, as defined above, will only apply to the following Specified Activities:

Pre-Ordering

1.1.4.4.1 Average response time for OSS Pre-Order Interfaces

Ordering and Provisioning

A. Completions

POTS & UNE POTS Loop and Port Combinations

1.1.4.4.2 Average installation interval

1.1.4.4.3 Percent SWBT Caused Missed Due Dates

1.1.4.4.4 Delay Days for Missed Due Dates

1.1.4.4.5 Percent No Access

Specials and UNE Specials Loop and Port Combination

1.1.4.4.6 Average installation interval

1.1.4.4.7 Percent SWBT Caused Missed Due Dates

UNEs (Excludes UNE Loop and Port Combination)

1.1.4.4.8 Average installation interval

1.1.4.4.9 Percent SWBT Caused Missed Due Dates

B. Order Accuracy

1.1.4.4.10 Percent POTS Installation Reports Within 10 Days

1.1.4.4.11 Percent Specials Installation Reports Within 30 Days

1.1.4.4.12 Percent UNE Installation Reports Within 30 Days

C. Order Status

1.1.4.4.13 Percent Firm Order Completions received within "x" hours

1.1.4.4.14 Percent Mechanized Rejects Returned within 1 hour of the start of the EDI/LASR batch process

1.1.4.4.15 Percent Mechanized Completion Notices return within one hour of successful execution of the SORD (BU340) batch cycle

D. Held Orders

1.1.4.4.16 Percent Company Missed Due Dates Due to Lack of Facilities

1.1.4.4.17 Delay Days for Missed Due Dates Due to Lack of Facilities

E. Flow Through

1.1.4.4.18 Percent Flow Through

Maintenance/Repair

A. Time to Restore

POTS & UNE POTS Loop and Port Combinations

1.1.4.4.19 Receipt to Clear Duration

1.1.4.4.20 Percent Out of Service < 24 Hours

Specials and UNE Specials Loop and Port Combination

1.1.4.4.21 Mean Time to Restore

UNEs (Excludes UNE Loop and Port Combination)

1.1.4.4.22 Mean Time to Restore

1.1.4.4.23 Percent Out of Service < 24 Hours

B. Repeat Troubles

1.1.4.4.24 Percent POTS & UNE POTS with Loop and Port Combinations Repeat Reports

1.1.4.4.25 Percent Specials and UNE Specials with Loop and Port Combination Repeat Reports

1.1.4.4.26 Percent UNEs (Excludes UNE Loop and Port Combinations) Repeat Reports

C. Report Rate

1.1.4.4.27 POTS & UNE POTS with Loop and Port Combinations Trouble Report Rate

1.1.4.4.28 Specials and UNE Specials with Loop and Port Combination Failure Frequency

1.1.4.4.29 UNEs (Excludes UNE Loop and Port Combinations) Trouble Report Rate

D. Appointments Missed

1.1.4.4.30 POTS & UNE POTS with Loop and Port Combinations Percent Missed Repair Commitments

1.1.4.4.31 UNEs (Excludes UNE Loop and Port Combinations) Percent Missed Repair Commitments

E. No Access

1.1.4.4.32 POTS & UNE POTS with Loop and Port Combinations Percent No Access

General

A. Billing

1.1.4.4.33 Percent of Billing Records Transmitted Correctly

2.0 Specified Performance Standards

- 2.1 The performing Party warrants that it will meet the above Performance Criteria, except in those instances where its failure to do so is a result of a) the other Party's failure to perform any of its obligations set forth in this Agreement, b) any delay, act or failure to act by an end user, agent, or subcontractor of the other Party, c) any Force Majeure Event, or d) for INP, where memory limitations in the switch in the service office cannot accommodate the request.
- 3.0 **Occurrence of a Specified Performance Breach.**
- 3.1 In recognition of either: 1) the loss of end user opportunities, revenues and goodwill which a Party might sustain in the event of a Specified Performance Breach; 2) the uncertainty, in the event of a Specified Performance Breach, of a Party having available to it end user opportunities similar to those opportunities available to a Party at the time of a breach; and 3) the difficulty of accurately ascertaining the amount of damages a Party would sustain if a Specified Performance Breach occurs. In the event of a Specified Performance Breach, the breaching Party agrees to pay the other Party, subject to Section 5.1 below, damages as referenced in all of Section 1.1.4 of this Attachment.
- 4.0 **Liquidated Damages**
- 4.1 The damages payable by either Party as a result of a Specified Performance Breach will be the amounts specified for each Specified Performance Breach in all of Section 1.1.4 (collectively, "Liquidated Damages"). The Parties agree and acknowledge that a) the Liquidated Damages are not a penalty and have been determined based upon the facts and circumstances of the Parties at the time of the negotiation and entering into of this Agreement, with due consideration given to the performance expectations of each Party; b) the Liquidated Damages constitute a reasonable approximation of the damages either Party would sustain if its damages were readily ascertainable; and c) neither Party will be required to provide any proof of the Liquidated Damages.

5.0 Limitations

- 5.1 In no event will a Party be liable to pay the Liquidated Damages if that Party's failure to meet or exceed any of the Performance Criteria is caused, directly or indirectly, by a Delaying Event. A "Delaying Event" means: a) a failure by a Party to perform any of its obligations set forth in this Agreement; b) any delay, act or failure to act by an end user, agent or subcontractor of either Party; c) any Force Majeure Event; d) for Out of Service Repairs for unbundled Loops, where either Party lacks automatic testing capability; or e) for INP, where memory limitations in the switch in either Party serving office cannot accommodate the request. If a Delaying Event (i) prevents a Party from performing a Specified Activity, then such Specified Activity will be excluded from the calculation of a Party's compliance with the Performance Criteria, or (ii) only suspends a Party's ability to timely perform the Specified Activity, the applicable time frame in which that Party's compliance with the Performance Criteria is measured will be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the Delaying Event.

6.0 Records and Reports

- 6.1 SWBT will not levy a separate charge for provision of the data to AT&T called for under this Attachment. Notwithstanding other provisions of this Agreement, the Parties agree that such records will be deemed Proprietary Information.
- 6.2 Reports are to be made available to the CLEC by the 15th day following the close of the calendar month. If the 15th falls on a weekend or holiday, the reports will be made available the next business day. If requested by AT&T, data files of AT&T raw data are to be transmitted by SWBT to AT&T on the 15th day pursuant to mutually acceptable format, protocol, and transmission media.
- 6.3 If SWBT does not provide a measurement at the time required, and fails to cure this omission by the 15th day of the succeeding month, the measurement will be considered to be out of parity by more than three standard deviations under the liquidated damages provisions set forth above, unless SWBT can demonstrate that the omission was the result of any of the factors listed in section 5.1 above.
- 6.4 Using the rules defined for liquidated damages, SWBT will provide the credits for the associated damages within 30 days after reporting the measurement. Where liquidated damages result from a failure to report a measurement, SWBT will provide the credits within 30 days after the expiration of the cure period provided for in section 6.3 above (i.e., the 15th day of the month succeeding the month in which the omission occurred).

6.5 AT&T and SWBT will consult with one another and attempt in good faith to resolve any issues regarding the accuracy or integrity of data collected, generated, and reported pursuant to this Attachment. In the event that AT&T requests such consultation and the issues raised by AT&T have not been resolved within 45 days after AT&T's request for consultation, then SWBT will allow AT&T to have an independent audit conducted, at AT&T's expense, of SWBT's performance measurement data collection, computing, and reporting processes. AT&T may not request more than one audit per twelve calendar months under this section. This section does not modify AT&T's audit rights under other provisions of this Agreement.

6.6 Should SWBT at some future date purchase local services from AT&T, the Parties will negotiate performance measures to be provided to SWBT.

7.0 **Remedial Plans**

7.1 Within 15 business days after any of the following events occur, SWBT will prepare and provide to AT&T a remedial plan that specifies and schedules the steps SWBT will take to determine and remedy the particular performance deficiency:

7.1.1 SWBT reports performance for AT&T on any Performance Measurement in a single month that is greater than three standard deviations below the Performance Criteria; or

7.1.2 SWBT reports performance for AT&T on any Performance Measurement in three successive months that is greater than one standard deviations below the Performance Criteria.

8.0 **Initial Implementation; Data Review.**

8.1 The Parties agree that none of the liquidated damages provisions set forth in this Attachment will apply (except for liquidated damages based on a failure to provide Performance Measurement reports) during the first three months after AT&T first purchases the type of service or unbundled network element(s) associated with a particular Performance Measurement. During this three month period the Parties agree to consider in good faith any adjustments that may be warranted to the Performance Criteria for that Performance Measurement. The remedial plan provisions of this Attachment apply during this three month period.

8.2 The Parties agree to revise the Performance Criterion for a Performance Measurement whenever a sufficient quantity of performance data indicate that SWBT's performance for itself on a particular measurement does not closely enough approximate a normal distribution curve to make use of standard deviation measures

reasonable. In this event, the Parties will substitute a Performance Criterion that provides an alternative, statistically sound measure of parity performance. If the Parties cannot agree on a substitute Performance Criterion, they will appoint an independent statistician to select one.

9.0 Performance Measurements

SWBT will provide the following Performance Measurements under this Agreement:

9.1 Pre-Ordering

9.1.1 Measurement - Average response time for OSS Pre-Order Interfaces

Definition - The average response time in seconds from the SWBT side of the Remote Access Facility (RAF) and return for pre-order interfaces (Verigate and DataGate) by function:

| | | | |
|---|-----------|--------------|--------------|
| • Address Verification | Datagate: | 80% ≤ 5 sec | 90% ≤ 7 sec |
| | Verigate: | 80% ≤ 5 sec | 90% ≤ 7 sec |
| • Request For Telephone Number | Datagate: | 80% ≤ 4 sec | 90% ≤ 6 sec |
| | Verigate: | 80% ≤ 4 sec | 90% ≤ 6 sec |
| • Request For Customer Service Record (CSR) | Datagate: | 80% ≤ 6 sec | 90% ≤ 8 sec |
| | Verigate: | 80% ≤ 7 sec | 90% ≤ 10 sec |
| • Service Availability | Datagate: | 80% ≤ 3 sec | 90% ≤ 5 sec |
| | Verigate: | 80% ≤ 11 sec | 90% ≤ 13 sec |
| • Service Appointment Scheduling (Due Date) | Datagate: | 80% ≤ 2 sec | 90% ≤ 3 sec |
| | Verigate: | 80% ≤ 2 sec | 90% ≤ 3 sec |
| • Dispatch Required | Datagate: | 80% ≤ 17 sec | 90% ≤ 19 sec |
| | Verigate: | 80% ≤ 17 sec | 90% ≤ 19 sec |

Calculation - $\Sigma[(\text{Query Response Date \& Time}) - (\text{Query Submission Date \& Time})] / (\text{Number of Queries Submitted in Reporting Period})$

Report Structure - Reported on a company basis by interface for DATAGATE and VERIGATE.

9.1.1.1 Note: The response times stated above may be altered if mutually agreed upon.

9.1.1.2 Note: AT&T and SWBT agree that when national standards for pre-ordering are available and both parties have implemented the interface, the parties will jointly develop performance measurements to be used recognizing that a comparative parity measure or a mutually agreed to standard will be provided.

9.1.2 Measurement - EASE Average Response Time

Definition - Average screen to screen response from the SWBT side of the Remote Access Facility (RAF) and return.

Calculation - $\Sigma[(\text{Query Response Date \& Time}) - (\text{Query Submission Date \& Time})]/(\text{Number of Queries Submitted in Reporting Period})$

Report Structure - Reported for all CLECs and SWBT by division name(CPU platform).

9.1.3 Measurement - Percent Responses Received within "x" seconds.

Definition - The % of functions completed in "x" seconds for pre-order interfaces (Verigate and DataGate) by function:

- DataGate: <5, <7, and >7
Verigate: <5, <7, and >7
- Request For Telephone Number
DataGate: <4, <6, and >6
Verigate: <4, <6, and >6
- Request For Customer Service Record (CSR)
DataGate: <6, <8, and >8
Verigate: <7, <10, and >10
- Service Availability
DataGate: <3, <5, and >5
Verigate: <11, <13, and >13
- Service Appointment Scheduling (Due Date)
DataGate: <2, <3, and >3
Verigate: <2, <3, and >3
- DataGate: <17, <19, and >19
Verigate: <17, <19, and >19

Calculation - $(\# \text{ of responses within each time interval} \div \text{total responses}) * 100$